

APPLICANT:
Valorie E. Colby and
Edwin C. Colby, Sr.

BEFORE THE
ZONING HEARING EXAMINER

REQUEST: A special exception pursuant to
Section 267-53F(8) of the Harford County Code
to allow a personal care boarding home

FOR HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: March 23, 2005

Case No. 5474

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Valorie E. Colby and Edwin C. Colby, Sr.

LOCATION: 1317 North Stepney Road, Aberdeen
Tax Map: 51 / Grid: 3B / Parcel: 533
Second Election District (2nd)

ZONING: AG / Agricultural

REQUEST: A special exception pursuant to Section 267-53F(8) of the Harford County Code, to allow a personal care boarding home in an Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Valorie E. Colby, Co-Applicant, first testified. Mrs. Colby stated that she and her husband were requesting a special exception to own and operate a personal care boarding home to be located at 1317 North Stepney Road, Aberdeen, Maryland.

Mrs. Colby is a registered nurse and has worked as a health professional for approximately ten years. She is trained in IV therapy, cardiopulmonary resuscitation, and has advanced training in various aspects of health care. Mr. Colby is an Army veteran, certified in cardiopulmonary resuscitation and is trained as a combat medic. Both will be involved in the operation of the proposed personal care boarding home.

The subject property consists of approximately 7.95 acres, improved by a three bedroom, two and one-half bath house, with a study. The Applicants also own an adjoining, unimproved parcel containing approximately 10.20 acres. Mrs. Colby believes that the site of the subject property is a good one for a personal care boarding home, as it is located close to hospitals, is easily accessible by the existing road network, and is relatively isolated from adjoining neighbors. Mrs. Colby indicated that the residence of the nearest neighbor is about 500' to the south of the subject property.

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The Applicants plan no alterations to the exterior of the subject property, other than continuing their clean-up efforts. The Applicants have already made substantial improvements to the interior of the property, including the installation of a new water heater and heating system. Mrs. Colby stated that percolation tests have been run, and have found the property to be satisfactory for the proposed use. The well has also been tested and is satisfactory.

The amount of staffing in the proposed facility will depend upon the individual needs of the residents. Both Mrs. and Mr. Colby will be available at the home. Mrs. Colby will continue with her full-time job, but will be available and at the personal care boarding home on weekends. The home will have 24 hour registered nurse coverage, in the event Mrs. Colby is not present or available. At least one employee will be present at all times. That employee will help with cleaning, cooking, and providing resident aid. Transportation is provided to residents as needed. Laundry is done for them; meals are provided. Mrs. Colby anticipates the operation as being a small, personal one. She loves her work, and she and her husband are enthusiastic about operating a business which will assist the elderly.

The Applicants anticipate no more than five residents will reside in the facility.

The Applicants are aware of the recommendations of the Harford County Department of Planning and Zoning, and will agree to re-subdivide the subject property into a re-configured lot of not less than two acres. The Applicants stated that a 30 foot by 30 foot area is available for parking, which should be sufficient. That area would park up to seven vehicles.

The Applicants were cross-examined by Catherine Hibbard, an adjoining neighbor.

In response to Mrs. Hibbard's questions, Mr. Colby testified that percolation on the subject property was tested for a total of five residents and found satisfactory. The Applicants are not living on the property at present, but they will live on the property once residents begin to move in. The residents which the Applicants expect to board will be ambulatory, up to Level 2, which are individuals who require moderate assistance. Those individuals will be elderly. The personal care boarding home will not be for addicted individuals or individuals under psychiatric care, and referrals of those individuals will not be accepted.

Mrs. Colby testified that there is a large, open field across Stepney Road from the subject property. The Applicants own the parcel to the rear of the subject property. To the south of the subject property is the Hibbard residence. The property to the north cannot be seen from the proposed facility. Mrs. Hibbard stated she could see the Applicants' house from her property.

Mr. and Mrs. Colby will be the only staff on the property, at first. The Applicants will eventually move out of the subject property and will build a new home on the adjoining parcel.

The Applicants were then cross-examined by Kevin Shetterly, a property owner who resides at 1216 Aldino-Stepney Road.

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Upon questioning, Mrs. Colby stated that she proposed to have a small sign advertising the use of the property as a personal care boarding home. She indicated this sign would be similar to others in the area.

Mrs. Colby then stated that the minimum age of the residents would be fifty-five. She explained that Level 1 classification are individuals who need minimum assistance; Level 2 classification are individuals who need moderate assistance; and a level 3 classification are people who are bed-ridden or on ventilation, and who need intensive care.

The residents will have some visitors. Visiting hours will be daily from 11:00 a.m. to 8:00 p.m. Mrs. Colby stated that she has never run a personal care boarding home before. However, she is a charge nurse, and is very familiar with the management of patients and health care issues. The Applicants own no other personal care boarding homes.

Mr. Shetterly indicated he is concerned about the property being frequented by emergency vehicles, such as ambulances. He believes the sirens and lights from those emergency vehicles would disturb the neighborhood.

The Applicants then testified that no employees would reside at the residence, only patients. The Applicants will vacate the premises when they have a minimum of three residents. No special exception is needed for up to two residents, it is only when a third resident comes onto the property is the special exception necessary. At that time, the Applicants will move from the property and will move into the new home which will be constructed on the adjoining lot.

The Applicants testified they are aware of State regulations on personal care boarding homes. Those regulations will be complied with.

The Applicants were next cross-examined by Howard Childers, Jr., who resides at 1402 N. Stepney Road, Aberdeen, Maryland.

The Applicants responded to Mr. Childers' questions that the Health Department, in doing the percolation tests, were aware of the lines of the lot which will be expanded as recommended by the Harford County Department of Planning and Zoning. The Applicants testified they are planning no future expansions to the personal care boarding home.

The Applicants were then cross-examined by Gary Sargable, who owns property across Stepney Road from the Applicants.

The Applicants testified, in response to Mr. Sargable's questioning, that the facility will be limited to disabled elderly individuals, it will not be a half-way house, nor will it house drug addicts. Mrs. Colby is a registered nurse, and will be at the premises or available at all times except when otherwise employed.

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Anthony McClune of the Harford County Department of Planning and Zoning then summarized the findings of the Department. The Department believes that the Applicants can meet all conditions of applicable Code provisions. The Applicants will be required to reconfigure the subject property to increase it to a minimum size of 2 acres. While the Applicants had originally requested permission for six residents, they have now modified their request to five. The Department supports that modification.

The Health Department has approved percolation sufficient for five residents only.

The use would require a minimum of four off street parking spaces, which the Applicants can easily meet.

The requirements of Code Section 267-9I are met or exceeded by the proposed use. The use will have no impact on traffic, and is generally in compliance with all regulations.

The Department recommends, additionally, that there be no signage on the property.

Mr. Colby then stated that the improvement which he and his wife are making will improve the value of the property.

Next testified Catherine Hibbard. Mrs. Hibbard stated that she and her family recently moved from the City of Baltimore, being attracted to the agricultural nature of her community. She is very concerned about the proposed use. She is against any commercial activity in her neighborhood, is concerned about congestion which the use may bring to the neighborhood, and its potential adverse impact on the neighborhood.

Bernard Zahm of 1206 N. Stepney Road, expressed his worry about taxes, believing the proposed use may cause his real estate valuation to increase. He lives directly across from the subject property on 29 acres.

Kevin Shetterly then expressed his concern about the scope of the request. He is concerned that more than five people may take up residence in the property. He does not want more residents in the area next to his property. He does not want more people moving to the area. Mr. Shetterly is recommending conditions: 1) the Applicants notify emergency services personnel about the proposed use; 2) that the property be run by the Applicants only, and not other individuals; 3) that the Applicants remain on or adjacent to the property during their management of the property. Mr. Shetterly is concerned about absentee owners, and wants the Applicants to remain on the property or adjacent to the property at all times.

Next testified Shirley Zahm who has lived in the neighborhood all of her life, and desires that the property remain agricultural in nature.

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Next testified Mr. Colby. Mr. Colby indicated that the use will not affect the Hibbard property. Passers-by in the neighborhood should have no idea that the use is a personal care boarding home. There will be no outward sign of that activity. The Applicants will not accept the requirement that they live either on the property or adjacent thereto. Where they live is, in Mr. Colby's opinion, their own business.

The use of the property will be commercial. To all outward appearances the use will be exactly the same as if a family lived on the property. Mr. Colby emphasized his wife has been in the health care business for ten years, is committed to caring for elderly people and will do a good job.

APPLICABLE LAW:

The Applicant is requesting a special exception to Section 267-53F(8) of the Harford County Code which states:

- “(8) Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*
- (a) The proposed use shall be located in a single-family detached dwelling.*
 - (b) The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*
 - (c) A maximum density of one (1) boarded per two thousand (2,000) square feet of lot area shall be maintained.*
 - (d) Adequate off-street parking shall be provided.*
 - (e) Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in further detail below.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is located in a predominantly agricultural area of Harford County. The land uses in that area are crop and pasture land, wood lands, and some small residential subdivisions. The City of Aberdeen is located just to the east and south of the subject property. The subject property is located on Stepney Road, a County owned and maintained Minor Collector-Rural Road.

The photographs of the property amply demonstrate the relatively open, wooded and lightly populated nature of the surrounding area. The home itself is a single story home, virtually surrounded by mature trees. The house sits somewhat off Stepney Road. A review of the aerial photograph (Attachment 9) shows no other structures within apparent sight distance of the subject property with the exception of the property to its south, which is owned by Mrs. Hibbard, and whose house is located a significant distance. There also appears to be substantial vegetative screening between the two properties, primarily on the subject property.

Each of the Applicants have a background in health care, with Mrs. Colby actively employed as a registered nurse. They exhibit an eagerness to begin this business, and articulate an interest and determination to provide a positive and constructive environment for elderly individuals.

Opposed to the use are residents and neighbors of the area who expressed no doubt heartfelt concerns about a potential change which the use will bring to this primarily agricultural/residential neighborhood. They expressed concerns about potential traffic impacts, the impact of emergency equipment visiting the property, the potential problem of residents wandering about the property, and other individuals on the property of its use as something other than a single family residential.

Interestingly, and perhaps as a sign of today's accelerating real estate market, no real concern was expressed about property values being diminished by the use. To the contrary, there was an expressed concern that tax assessments could increase as a result.

While no doubt the use is of concern to the neighbors, for reasons well expressed, those concerns do not rise to such a level as to support a finding that the use would have an adverse impact on the neighborhood. The concerns of the neighbors are generalized fears of impact, without articulated facts or evidence of record to support those fears. Indeed, an examination of the photographs in the file, the testimony of the Applicants, and of the Department of Planning and Zoning Staff Report identifies no specific feature of the proposed use which should cause any significant or even measurable impact to the neighborhood.

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In reviewing any requested special exception one must consider the initial decision of the Legislative Body, in this instance the Harford County Council, which has legislatively determined that the proposed use is compatible for the district in which it is sought, provided certain conditions are met;

“It is not whether a special exception or conditional use is compatible with permitted uses that is relevant to the administrative proceeding. The legislative body, by designating a special exception, has deemed it to be generally compatible with other uses.”

See Eastern Outdoor Advertising Company v. Mayor and City Council of Baltimore, 128 Md. App. 294 (1999). See also Mossberg v. Montgomery County, 107 Md. App. 1 (1995).

Accordingly, compatibility has already been determined, and is not subject to review by the Board of Appeals, provided its specific standards are met. Those specific standards are set forth at Section 267-53F(8) and addressed as follows:

“(8) *Personal Care Boarding Homes. These uses may be granted in the AG, RR, R, R1, R2, R3, R4, RO, VB, and VR Districts, provided that:*

(a) *The proposed use shall be located in a single-family detached dwelling.*

The structure in which the proposed use will be located is a single-family detached dwelling.

(b) *The proposed use meets the minimum lot size requirements for a conventional single-family residence in the district where located.*

The subject parcel is .795 acres in size. The Department of Planning and Zoning has recommended a condition, which the Applicants have accepted, that the square footage of the lot be increased to 2 acres minimum. A 2 acre lot would meet the minimum lot size requirements for a conventional single family residence in this Agricultural District.

(c) *A maximum density of one (1) boarder per two thousand (2,000) square feet of lot area shall be maintained.*

The Applicants propose a maximum of five (5) boarders, which is significantly less than the maximum number of boarders which would otherwise be allowed in this property. (The maximum number of boarders allowed on the property is 1 boarder per 2,000 square feet of area.)

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(d) *Adequate off-street parking shall be provided.*

There is sufficient off-street parking. There was no question raised at the hearing that parking would not be adequate, and it is accordingly found that parking is adequate.

(e) *Where an application is for construction of a new dwelling, the building shall be similar in appearance to other single-family dwellings in the neighborhood.*

This section is not applicable as the application is not for construction of a new dwelling.

The above findings were not seriously contested at the hearing, and no evidence was proffered, or even a suggestion made, that these specific requirements are not met. Accordingly, it is found that the requested special exception for a personal care boarding home, which has legislatively been determined to be compatible with the neighborhood, meets the specific requirements of Section 267-53F(8).

Of course, the analysis does not stop at this point. It is the potential impact upon the neighborhood of the proposed use which the neighbors find to be most disturbing, and which must be addressed.

Those concerns are perhaps best reviewed by application of Section 267-9I of the Development Regulations, Limitations, Guides and Standards which require an analysis not only of the generalized and specific objections raised by the neighbors, but other considerations as well. Those standards are set forth and addressed as follows:

(1) *The number of persons living or working in the immediate area.*

The subject property and the proposed use is located outside the City of Aberdeen, in a relatively rural/agricultural area of Harford County. There is no evidence that the number of persons living and working in this relatively rural area would be impacted in any way by the operation of the proposed personal care boarding home, or would in any way support a finding that the personal care boarding home should not be allowed.

(2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Pedestrian facilities are not an issue. The residents of the personal care boarding home would generally not be leaving the property except by vehicle. Pedestrians would have no reason to walk to or from the property given the rural agricultural nature of the area.

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Uncontradicted testimony at the hearing is that the sight distances along Aldino Road from the subject property are good. Aldino Road is an improved, County maintained road which would adequately support the limited amount of traffic which the proposed use would generate. It is accordingly found that the proposed use would have no impact on traffic.

Furthermore, as discussed above, parking on the site is adequate for four to five residents, most of whom would in all likelihood not have vehicles, their guests and staff personnel.

While some concern was expressed about the potential increase in the number of emergency vehicles on the roadways because of increased visits to the personal care boarding home, there is no credible evidence to support such an assertion. While it may be true that emergency vehicles will need to visit the personal care boarding home on occasion in order to transport a stricken resident, the impact on the neighborhood of those occasional visits is difficult if not impossible to quantify and should, in any event, be no more burdensome than the normal frequency of ambulances, fire engines, and medivac helicopters to which all residents are accustomed.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

This use will have no identifiable impact on County or community growth. There is no foreseeable or identifiable negative fiscal impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No concerns were raised that potential odors, dust, smoke, fumes, vibration, glare and noise upon the surrounding properties. No evidence was presented that any of these issues may be present. Accordingly, it is found that the proposed use will not generate any of these impacts.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Level and Abingdon Fire Departments will provide fire protection and emergency assistance. Private trash collection will be arranged by the Applicants. The property is serviced by a private well and septic system, which the Health Department has found to be adequate for five (5) residents.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

A special exception use, as discussed above, has been legislatively determined to be generally compatible with the uses allowable in its particular zoning district. The use is consistent, accordingly, with generally accepted planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The purposes set forth in the proposal is consistent with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No such sensitive natural features or opportunities for recreation and open space have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Accordingly, a review of the Limitations, Guides and Standards, and embodies in Section 267-9I show that the use will articulate an adverse impact, and fully complies with all standards therein.

People's Council of Baltimore County v. Mangione, 85 Md. App. 738 (1991), which involved a request for a special exception for a 240 bed nursing home, clearly defined the type of adverse impact finding which must be made in order to allow the denial of the special exception:

“Specifically, we shall review facts and circumstances upon which the Board could have found that the special exception use and the location proposed would cause an adverse affect upon adjoining and surrounding properties unique and different in kind or degree, than that inherently associated with such use regardless of its location within the zone . . .”

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Furthermore, the legislative body, in creating the special exception which is on review in this case, has already determined it to be generally compatible with other uses. It is not whether the special exception will have any adverse effects, as certain adverse effects are to be expected. After all, the use is a special exception, not a principal permitted use. It is whether the adverse effects in a particular location will be greater than the adverse effects normally associated with that particular use. See Eastern Outdoor Advertising Company v. Mayor and City Council, 128 Md. App. 294 (1999).

On the other hand, a denial of the requested special exception must be supported by evidence that the adverse effects from the proposed use would be greater at the proposed location than would generally be the case elsewhere within the zone. There must be reasons, stated of record, of how the proposed use would undermine the rural and historic character of the neighborhood, as defined by the neighbors. There must be evidence stated of record that would support a finding that the characteristics of the area would be diminished or changed in a harmful way. There is, however, no evidence to support such a conclusion. In truth, the objections of the neighbors do not rise above the level of ‘vague and generalized expressions of opinion which are lacking in probative value’. See Anderson v. Sawyer, 23 Md. App. 612 (1974).

While it is true that the proposal may have some impact (although as discussed above, no specific impact has been articulated in any fashion), the impact does not rise to the level which would justify a rejection, or even raise real concern. The identifiable impacts associated with such a use, which would include, perhaps, increased emergency vehicle traffic, is no greater than the type of impact which would be associated with such a personal care boarding home regardless of where it be located. Indeed, given the rural residential neighborhood of the subject property, and its relative distance from other neighboring dwellings, the impact at this location should be considerably less than would be the case if located in many other areas of Harford County.

The applicable standard does not require this to be an ideal location, only a location which does not present an adverse impact to the neighborhood greater than would be present if located somewhere else in the same district.

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CONCLUSION:

Accordingly, the requested special exception is approved, subject to the following conditions:

1. The Applicants shall submit a site plan to the Department of Planning and Zoning for review and approval through the Development Advisory Committee.
2. The Applicants shall submit a preliminary plan to the Department for review and approval, increasing the area of the subject parcel to a minimum of two acres. A final plat must also be submitted to the County for approval and recordation in the County Land Records.
3. The approval shall be limited to five (5) residents not including family members or other care providers.
4. The Applicants shall obtain all necessary permits and inspections for the proposed use and for any necessary renovations to the existing structures.
5. The approval shall be for the Applicants only and shall terminate upon sale of the property, or transfer of the ownership or management of the personal care boarding home business to be conducted thereon.
6. There shall be no signs of any nature advertising or indicating the use of the subject property.

Date: April 20, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner